

IN THE MATTER OF:)
)
New Vision Restoration, LLC) Docket No. 12.4-11284A
302 Fulton Avenue)
Kingsport, TN 37660)
)

March 30th, 2011

For the State: Mr. Michael Driver
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1 (Whereupon, the following proceedings
2 commenced at 9:26 a.m. as follows:)

3 THE COURT: Which case do you want to proceed
4 with first?

5 MR. DRIVER: New Vision Restoration,
6 Your Honor.

7 THE COURT: Is the state ready to proceed?

8 MR. DRIVER: Yes, Judge.

9 THE COURT: Good morning, board members.
10 This hearing is now convened before the Tennessee Board
11 for Licensing Contractors to consider the case of New
12 Vision Restoration, LLC, docket number 12.14-111284A.
13 My name is Randall LaFevor, and I've been assigned by
14 the secretary of state to preside at this hearing as
15 the administrative judge. In that capacity, I will
16 make all rulings regarding the order of proceedings,
17 admissibility of evidence, and questions of law
18 pursuant to provisions of the Tennessee Administrative
19 Procedures Act. However, I will not participate in the
20 findings of fact or the ultimate decision of the board.
21 Those decisions will be made by the board members.

22 In the first proceeding today the state will
23 be represented by Mr. Michael Driver, assistant general
24 counsel for the Tennessee Department of Commerce and
25 Insurance. At this time I'll ask, is there anybody

1 here representing New Vision Restoration, LLC?

2 (No response.)

3 THE COURT: Apparently, there is nobody here
4 representing the respondent. At this time, for the
5 purpose of the record in this hearing, I'll ask the
6 board members to introduce themselves. I know you have
7 already done that for your meeting this morning, but if
8 you will do it again for the purpose of this hearing
9 I'd appreciate it.

10 MR. HAYES: Jerry Hayes, Paris.

11 MR. BRODD: Mark Brodd, Knoxville.

12 MR. WHITTINGTON: Keith Whittington, Johnson
13 City.

14 MR. SMITH: Reese Smith, Franklin.

15 MR. MASON: Bill Mason, Greenbrier.

16 THE COURT: Thank you, gentleman. And I will
17 ask at this time if any board member has any knowledge
18 of the facts concerning this case, I will ask if you
19 will identify yourself so we can discuss that.

20 (No response.)

21 THE COURT: In that case, then we'll move on,
22 and I will just mention very quickly that the board
23 members are reminded that no discussion of this case
24 should take place outside the hearing room. The
25 Sunshine Law requires that all board discussions and

1 deliberations occur in public and in the presence of
2 the parties.

3 As we begin this hearing, there are a limited
4 number of documents in the record. The record includes
5 the notice of hearing and charges filed on
6 February 14th, 2011, a prehearing order that I issued
7 on February 25th, a list of the state's witnesses and
8 exhibits filed on March 17th, 2011, and notices of
9 three affidavits and the state's intention to use those
10 during the hearing, all of which were filed on
11 March 17th, 2011. Those documents are in the record
12 and may be referred to by the witnesses and the parties
13 as we proceed.

14 All right. At this point, since there is
15 nobody here representing New Vision Restoration,
16 Mr. Driver, do you have a motion and wish to proceed?

17 MR. DRIVER: The state would move for default
18 and wishes to proceed, Judge.

19 THE COURT: Do you have proof of service in
20 the case?

21 MR. DRIVER: Judge, New Vision Restoration
22 was sent certified mail containing a notice of hearing
23 and charges to 302 Fulton Avenue in Kingsport,
24 Tennessee, which was returned to sender, not
25 deliverable as addressed. That address was shown in a

1 search to be the one on file with the board for
2 licensing contractors.

3 Contractors are required by Rule 68001.08 to
4 notify the board of any change of address within 30
5 days. A search was also performed with the secretary
6 of state's business records for New Vision Restoration,
7 LLC, which showed the registered agent to be Randy
8 Jenkins with an address of 302 Fulton Avenue,
9 Kingsport, Tennessee 37660, the same address that the
10 certified mail was sent to.

11 Phone calls were made to 423-247-5131,
12 believed to belong to Mr. Jenkins, which was
13 disconnected; 423-863-3445, where a voice mail
14 identified it as belonging to Randy, and a voice mail
15 was left.

16 THE COURT: All right. First, I'm going to
17 mark your written proof of service green card as
18 Exhibit 1 to this proceeding.

19 (Whereupon, the previously mentioned document
20 was marked as Exhibit No. 1.)

21 THE COURT: And I'll circulate this to the
22 board members for their consideration. Board members,
23 a request for a default is covered by Tennessee Rules
24 and Regulations, Rule Number 1360-4-1-.06 concerning
25 service of notice of hearings. I will state for you

1 that based on the statements of Mr. Driver, if the
2 department has complied in all respects with the
3 attempts to notify the respondent that are required by
4 that rule and also by the code section that applies,
5 failure of a respondent to collect certified mail that
6 is addressed properly and to the address that was
7 provided, pursuant to the board's rules and the
8 department's rules and regulations, is sufficient to
9 establish a proper service under these circumstances.

10 At this time there is a motion before the
11 board asking that the state be permitted to proceed in
12 default, and if you would like to take a vote on that,
13 we will proceed now.

14 MR. WHITTINGTON: Board, does everyone
15 understand the question? Any discussion on the
16 question?

17 (No response.)

18 MR. WHITTINGTON: Do you need a roll call
19 vote or a regular yea or nay vote?

20 THE COURT: A regular yea or nay will be
21 fine.

22 MR. WHITTINGTON: All in favor of the motion,
23 say aye.

24 THE BOARD: Aye.

25 MR. WHITTINGTON: Opposed likewise.

1 (No response.)

2 MR. WHITTINGTON: Motion carries.

3 THE COURT: Mr. Driver, I'm going to find
4 that based on the board's vote and decision, that the
5 respondent is in default, and if you would like to
6 proceed at this time with your case, please go forward.

7 MR. DRIVER: Thank you, Your Honor. The
8 state would call Carolyn Lazenby.

9 CAROLYN LAZENBY,
10 was called as a witness, having been first duly sworn,
11 testified as follows:

12 EXAMINATION

13 QUESTIONS BY MR. DRIVER:

14 Q. Could you state your full name for the
15 record.

16 A. Yes. It's Carolyn Lazenby.

17 Q. And what is your job title, Ms. Lazenby?

18 A. Executive director of the board for licensing
19 contractors.

20 Q. And how long have you been in that position?

21 A. Since 2005.

22 Q. And in that position do you maintain the
23 licensing records of contractors required to be
24 licensed?

25 A. Yes.

1 Q. And are you familiar with the license of New
2 Vision Restoration, LLC?

3 A. Yes.

4 Q. Do you know the date that this license was
5 initially granted?

6 A. Yes. It was issued -- it was granted on
7 September 27th, 2006.

8 Q. Okay. And what's the license number of that
9 license, Ms. Lazenby?

10 A. It's 57234.

11 Q. And what is the classification of that
12 license?

13 A. BC.

14 Q. Can you explain what a BC license is,
15 Ms. Lazenby?

16 A. It allows a contractor to build a
17 residential, commercial, and industrial.

18 Q. And does that license have a monetary limit
19 on it?

20 A. Yes. \$411,000.

21 Q. How long has that license limit been
22 \$411,000?

23 A. It was increased from \$100,000 to the 411,000
24 on 3/27/2009.

25 Q. Okay. And can you explain what the purpose

1 of the monetary limit is, Ms. Lazenby?

2 A. This is the amount that a contractor is
3 allowed to contract. It's for the total cost of the
4 total project.

5 Q. And what's the expiration date of that
6 license?

7 A. It expired on September 30th, 2010.

8 Q. Can that license be renewed any time until
9 September 30th, 2011, by a payment of a late fee?

10 A. Yes.

11 Q. Are you familiar with the license held by
12 Tom Stokes, d/b/a Distinctive Designs at all?

13 A. No.

14 MR. DRIVER: Nothing further from this
15 witness, Judge.

16 THE COURT: All right. Thank you. Are there
17 any questions by board members for this witness?

18 (No response.)

19 THE COURT: If not, then we will move to the
20 next witness.

21 MR. DRIVER: The state would call
22 Vickie Larkin.

23 THE COURT: Why don't we pull this red chair
24 up.

25 MS. LARKIN: I am nervous. I have never done

1 this before.

2 VICKIE LARKIN,
3 was called as a witness, having been first duly sworn,
4 testified as follows:

5 EXAMINATION

6 QUESTIONS BY MR. DRIVER:

7 Q. Could you state your full name for the
8 record, please.

9 A. Vickie Larkin.

10 Q. And what is your current address, Ms. Larkin?

11 A. 2044 Charlotte Street, Kingsport, Tennessee.

12 Q. How long have you lived at that address?

13 A. All my life.

14 Q. Ms. Larkin, are you familiar with New Vision
15 Restoration, LLC?

16 A. Yes, sir. I am.

17 Q. How did you become familiar with New Vision
18 Restoration?

19 A. I had a catastrophe fire in May of '06, and
20 Mr. Jenkins was one of the contractors that came by and
21 inspected. And everybody else was telling me I had to
22 tear it down, but he's the only one that said, you have
23 got a good foundation and there's no need to tear it
24 down, so we went with him.

25 Q. What was the damage from the fire like?

1 A. It was pretty traumatic. I lost living room,
2 bedroom, kitchen, and a bathroom.

3 Q. And did you end up entering into a contract
4 with New Vision Restoration?

5 A. Yes, I did.

6 Q. Okay. I'm going to give you this document,
7 and if you could tell me if that is a true and correct
8 copy of that contract?

9 A. Yes.

10 Q. And what was the amount of that contract?

11 A. This one here says \$242.

12 Q. \$242,000?

13 A. Yes. Excuse me. 242,771.08.

14 Q. And when was that contract entered?

15 A. 7/28 -- this says '08. Maybe it was in '08
16 then when my house burnt.

17 Q. It was May of 2008?

18 A. (No response.)

19 Q. I'm sorry. If you can answer me out loud.

20 A. Yes, sir. I'm sorry.

21 Q. It's difficult for the court reporter to
22 record nods.

23 A. I thought it was '06 that my house burnt. It
24 will be three years this year.

25 Q. And the last page of that contract shows the

1 amount being 219,000?

2 A. Yes, sir.

3 Q. But it was somewhere between 219,000 and
4 242,000?

5 A. Yes, sir.

6 Q. And was the insurance company supposed to pay
7 under the terms of this contract?

8 A. Well, the insurance company totaled my house
9 and sent me the funds, and I'm the one that gave the
10 funds to Mr. Jenkins.

11 Q. Do you know what the amount of the funds you
12 provided Mr. Jenkins was?

13 A. 220,000.

14 MR. DRIVER: Judge, the state would move that
15 the contract identified by Ms. Larkin be entered as the
16 next numbered exhibit.

17 THE COURT: All right. If you will pass that
18 back over here. All right. The contract is marked and
19 entered as Exhibit Number 2, and I will pass that to
20 the board members for their consideration.

21 (Whereupon, the previously mentioned document
22 was marked as Exhibit No. 2.)

23 MR. DRIVER: We do have copies.

24 THE COURT: Okay. If you would like to
25 distribute those. The original can be passed to the

1 court reporter.

2 THE COURT: It appears that the board members
3 have completed their review of Exhibit Number 2.
4 Mr. Driver, you may continue.

5 MR. DRIVER: Thank you.

6 BY MR. DRIVER:

7 Q. Ms. Larkin, can you describe for the board
8 the work that New Vision Restoration was to perform in
9 repairing your house?

10 A. They had to tear down my living room, my
11 kitchen, basically, my -- I had a little room off of
12 the kitchen that was an entrance to the house, and the
13 bathroom and the bedroom upstairs, and had to put all
14 new roof on. And when they first started out, they
15 were there every day. Then they kind of dwindled down,
16 and they was gone for three weeks and come back, be
17 there for one day, and be gone again.

18 They put up new dry wall and windows and
19 siding. When they first started out, I thought, all
20 right, they are doing a good job. And his first date
21 was January the 6th -- I mean, December the 6th that I
22 was going to be back in my house, but it didn't work
23 out that way. I didn't get back in until the following
24 year of May.

25 Q. And did you express your concerns to New

1 Vision Restoration?

2 A. I did. We was having L weeks at work, so I
3 took a total of seven weeks off, just so I could --
4 because I knew where his office was. And I would go
5 down there and say, okay, man, what's going on for
6 today? And, well, we have got to go do this, or we've
7 got to go do that. We'll be there tomorrow. And then
8 I would get a phone call, well, we can't be there, but
9 I'll be there Monday morning for the duration. Well,
10 Monday morning, well, we had to go get supplies. You
11 know, he was always putting me on the back burner.

12 Q. And do you recall in September 2008 when you
13 got a letter from Mr. Jenkins, the owner of New Vision
14 Restoration?

15 A. I got several. I don't know.

16 Q. If you could review this letter and see if
17 you recall receiving it.

18 A. Okay. Building codes. Yes, sir.

19 Q. And does this appear to be a true and correct
20 copy of the letter as you received it from Mr. Jenkins?

21 A. Yes, sir.

22 MR. DRIVER: The state would move that that
23 letter be entered as Exhibit 3, Your Honor.

24 THE COURT: All right. The September 25th,
25 2008 letter from New Vision Restoration to

1 Vickie Larkin is marked and entered as Exhibit Number 3
2 and may be reviewed by the board.

3 (Whereupon, the previously mentioned document
4 was marked as Exhibit No. 3.)

5 THE WITNESS: I need to make a comment about
6 this if I can.

7 MR. DRIVER: You may. Do you want to wait
8 until the board has finished reviewing?

9 THE COURT: Yeah. Let's give the board
10 members a chance to finish reading it first, and then
11 we will hear what you have to say.

12 THE BOARD: (Reviewing documents.)

13 THE COURT: All right. The board members
14 have reviewed Exhibit Number 3. Mr. Driver, you may go
15 ahead.

16 BY MR. DRIVER:

17 Q. Ms. Larkin, did you want to make a statement
18 about the letter?

19 A. Yes, sir. Down here where it states about
20 the floor joists throughout the house, I'm not a
21 contractor. I don't -- really am not aware of a whole
22 lot of this stuff, but to me when you remove floor
23 joists, you're taking up the floor. Well, if he was
24 doing that, how were we able to walk around the floor
25 and take pictures of the progress of the house?

1 Q. To clarify, Ms. Larkin, is it your testimony
2 that --

3 A. Right. There was no floor joists except in,
4 like, the living room that actually burnt, and the
5 kitchen and the bathroom. That's the only place in the
6 whole house that he replaced floor joists.

7 Q. And did I understand you correctly that the
8 floor wasn't even torn up in the rest of the house?

9 A. Right.

10 Q. If you could, Ms. Larkin, I'll direct you
11 back to Exhibit 3. At the end of the second line, did
12 Mr. Jenkins represent to you that there were changes
13 required by the building inspector?

14 A. Not until I got this letter.

15 Q. In this letter, I mean.

16 A. No. He didn't tell me what they were.

17 Q. I'm sorry. I'll rephrase. Did he represent
18 that there were changes; not, did he tell you what they
19 were, but did --

20 A. No.

21 Q. Okay.

22 A. He just stated to me that there were certain
23 codes that he had to go by to get my house back up.
24 And I realized that the electricity and the plumbing,
25 you know, were among those codes, and I expected that,

1 but some of the things that he has declared, I do
2 not agree with.

3 Q. At the end of the second line on that letter,
4 does it say that there were required changes by the
5 building inspector?

6 A. Right.

7 Q. Thank you. And did that cause you any
8 concern?

9 A. No. Because I thought he knew what he was
10 doing.

11 Q. At some point after that did you contact the
12 codes department of the City of Kingsport regarding
13 changes you had learned may have been required?

14 A. Well, he doesn't have it on here, but he was
15 charging me an extra 16,000-and-some-odd dollars to do
16 these codes and all this reframing and stuff. And I
17 called my insurance man, and he sent me the copy of the
18 codes that he was claiming he had to do.

19 Q. And what did you do after you received?

20 A. Then I sent a copy to Mike Freeman, the city
21 man, and he's the one that told me that none of those
22 things had to be done.

23 Q. And could you review this document, and let
24 me know if that's a copy of the letter that you sent
25 to -- it actually is addressed to Dee Morgan with the

1 City of Kingsport.

2 A. Right.

3 Q. And in that letter did you ask if the City of
4 Kingsport had required code changes with your home?

5 A. Right. Yes, sir.

6 Q. And is there handwritten answers that are,
7 from what you understood, the answers from Mr. Freeman
8 to the inquiries that you made?

9 A. Yes, sir.

10 Q. And does that appear to be a true and correct
11 copy of that letter as you received it back from the
12 City of Kingsport?

13 A. Yes, sir.

14 MR. DRIVER: The state would move that that
15 be entered as the next numbered exhibit, Your Honor.

16 THE COURT: All right. The letter identified
17 as having been written on March 10th, 2009, to the City
18 of Kingsport from Vickie Larkin will be marked and
19 entered as Exhibit Number 4.

20 (Whereupon, the previously mentioned document
21 was marked as Exhibit No. 4.)

22 THE COURT: And you can show it to the board
23 members. All right. It appears that Exhibit 4 has
24 been reviewed. You may proceed.

25

1 BY MR. DRIVER:

2 Q. Ms. Larkin, how did you identify the 11 items
3 that you requested information about in that letter?

4 A. What do you mean, how did I identify them?

5 Q. How did you decide to ask about those
6 particular items?

7 A. When the insurance company was telling me he
8 was charging X amount of dollars for getting the house
9 up to code.

10 Q. And --

11 A. I mean, it was like double jeopardy. He was
12 already paying -- charging me for electrical and the
13 plumbing, and then he turns around and says he's got to
14 do X amount of dollars to get it up to code. It should
15 be got up to code as he replaces the plumbing and
16 electrical.

17 Q. And these were the items that you learned
18 from the insurance company that New Vision Restoration
19 had made a request for additional money --

20 A. Right.

21 Q. -- because it was required to bring it up to
22 code; is that correct?

23 A. Yes.

24 Q. And, Ms. Larkin, do you remember in or around
25 January of 2009 New Vision Restoration, or one of its

1 representatives, approaching you with a check from
2 Westfield Insurance in the amount of \$24,500?

3 A. Yes, sir. That's the check for getting it up
4 to code.

5 Q. Review that and see if that appears to be a
6 correct copy of the front and back of that check.

7 A. Yes, sir.

8 Q. And does that check say it is for ordinance
9 and law expenses on the upper right-hand corner of it?

10 A. Yeah.

11 Q. And were you requested to sign that check?

12 A. Yes, sir. I was.

13 Q. Who requested that you sign that check?

14 A. See, I think he received it on Saturday from
15 the insurance man, and his secretary was at my door
16 Monday morning at 9:00, Randy wants you to sign this.
17 And I told her -- I said, I'm not signing it until he
18 gets done with my house.

19 Q. And who is that check paid to the order of?

20 A. Larry R. Larkin, Vickie M. Larkin, and New
21 Vision Restoration.

22 Q. And is it made out to all three of you?

23 A. Yes, sir.

24 Q. And if you will look at the second page of
25 that document, did you ever sign this check?

1 A. No, sir. I did not.

2 Q. Did Mr. Larry Larkin ever sign this check?

3 A. No, he did -- he was not even aware this
4 check exists.

5 Q. And was that check stamped as cashed?

6 A. Yes.

7 Q. And did you ever authorize that this check be
8 cashed?

9 A. No.

10 MR. DRIVER: The state would move that that
11 be entered as the next numbered exhibit, Judge.

12 THE COURT: All right. The check just
13 discussed by the witness is marked and entered as
14 Exhibit Number 5 and may be distributed to the board
15 members.

16 (Whereupon, the previously mentioned document
17 was marked as Exhibit No. 5.)

18 THE COURT: All right. The board members
19 have reviewed Exhibit Number 5. Mr. Driver, you may
20 proceed.

21 MR. DRIVER: Thank you, Your Honor.

22 BY MR. DRIVER:

23 Q. Ms. Larkin, what happened after you declined
24 to sign this check?

25 A. I had heard that -- my insurance man had

1 called me. I should call him Mr. Bader (phonetic).
2 I'm sorry. He called and was wanting to know about my
3 inventory, if I had it all fixed out yet or not, to
4 send back to him, and he asked me had I signed the
5 check. And I told him no. And he said, well, it's
6 cleared the bank. And I asked him to send me a copy of
7 it. It took a while, but I finally did get a copy of
8 it.

9 Q. Ms. Larkin, is there anything regarding this
10 matter that I haven't asked you about today that you
11 would like to tell the board at this time?

12 A. There's two items on the first initial
13 contract that I would like to bring up that he's added
14 in. There is a master bathroom. I have been in my
15 house almost two years, and I still haven't found it.
16 And a room that's a 20 x 20. I don't have a room in my
17 house that's 20 x 20. I mean, you know, little things
18 like that really builds up your faith in contractors.

19 Q. And were those items listed in that estimate
20 attached to the contract --

21 A. Right.

22 Q. -- that was entered --

23 A. Right.

24 Q. -- I believe as Exhibit 2 in this matter?

25 A. Yes, sir.

1 MR. DRIVER: Nothing further from this
2 witness, Judge.

3 THE COURT: All right. Thank you. Are there
4 any questions from board members of this witness at
5 this time?

6 EXAMINATION

7 QUESTIONS BY THE BOARD:

8 BY MR. HAYES:

9 Q. Did you have a 20 x 20 room before the fire?

10 A. No, sir. My house was built in 1929. My
11 rooms were like 13 x 14 with an 8-foot ceiling.

12 Q. Did you have a master bathroom before the
13 fire?

14 A. No. I have a total of two bathrooms in my
15 house, one upstairs and one downstairs.

16 THE COURT: Any other questions?

17 BY MR. SMITH:

18 Q. How much total dollars did you pay
19 New Vision?

20 A. 220,000.

21 Q. And was the house --

22 A. Then I had to buy me another heat pump to go
23 for the downstairs part because what he put in there
24 was just a cool air intake.

25 Q. Was the house finished when you moved back

1 in?

2 A. There's still a few little things, like my
3 banister still is not done. He referred me to a friend
4 of his, Larry Gilbert, and my banisters and stairs are
5 still not done.

6 Q. So what is your major complaint? Is it the
7 timing, as well as the --

8 A. Dollar amount.

9 Q. -- possible misappropriation of funds?

10 A. Right.

11 Q. What's your major complaint against this
12 builder?

13 A. I don't think he did what he told me he was
14 going to, you know.

15 BY MR. WHITTINGTON:

16 Q. When you signed the contract, did you expect
17 a 20 x 20 room and a master bathroom?

18 A. I honestly did not realize that he had put
19 that in the contract until I started sitting down one
20 day, because he was taking so long about getting the
21 house done. And I got to looking. And I'm like, wait
22 a minute. Wait a minute. This ain't right. There's
23 several other little things, but those are the two big
24 things.

25 Q. The two bathrooms that are in the house now,

1 are either one of them attached to the master bedroom?

2 A. No.

3 Q. So no way we could misconstrue master

4 bathroom?

5 A. No. And when I would look through the house

6 and see things, like a shower curtain, for instance,

7 oh, no, that's a personal item. You have to get that.

8 I have no racks in my bedroom closet to hang my

9 clothes. I have to go into another bedroom to get

10 dressed. But that's no big deal. I can do that at a

11 later date. You know, but it's the point that it's in

12 there that he was going to put it, but when I

13 questioned him about it, no, that's a personal item.

14 THE COURT: Any other questions?

15 BY MR. SMITH:

16 Q. How's the workmanship on the house?

17 A. Some of it is good, I really like it, but I

18 have a couple of cracks in the wall. Somehow or

19 another in my kitchen they had put a big upward --

20 around the window. And they didn't seal my windows, so

21 every time -- in the kitchen, every time we have a big

22 rain, water pours in there like a shower. So, you

23 know, there's -- like I said, they are just little

24 things, but when you pay that much money, you expect to

25 get something for it.

1 THE COURT: Other questions?

2 BY MR. MASON:

3 Q. Was it your intention that your house
4 basically be restored to the way it was before the
5 fire, or did you expect a whole lot of different
6 features?

7 A. I only requested two items. One was to
8 expand my kitchen a little bit and my living room,
9 because I had dead space in a room downstairs. So he
10 expanded my living room and my kitchen. Everything
11 else I wanted it to go back the way it was.

12 Q. You didn't request a master bathroom?

13 A. No. I did not.

14 THE COURT: Any others?

15 BY MR. WHITTINGTON:

16 Q. At any point in time were you ever out at
17 your home during construction that you saw a city
18 inspector on the job?

19 A. Once, when I called them.

20 Q. Who came out? Was it Mike Freeman?

21 A. Dee, I think. Mr. Dee.

22 Q. Did you have a conversation with him?

23 A. I did. Because the new construction, they
24 had it all -- living room, and they had already started
25 putting the siding up. And it was up so far. And I

1 got to noticing, and I'm like, there's something wrong
2 there. They are putting this weather barrier on the
3 old part, but they're not putting it on the new part.
4 Why is that?

5 So he came by and checked it out and told
6 them that, yeah, they needed to put that up there.
7 They never did. So on the new part of my house, my
8 kitchen, my bathroom up -- I mean, my living room and
9 my bedroom upstairs has no weather barrier on it, just
10 the siding and the wood. Oh, it's going to be
11 insulated real good. You're not going to have no
12 problem with it.

13 THE COURT: Any others?

14 (No response.)

15 THE COURT: Mr. Driver, any additional
16 questions?

17 MR. DRIVER: No additional questions, Judge.

18 THE COURT: Thank you, Ms. Larkin. You can
19 return to your seat. Next witness.

20 MR. DRIVER: The state would call
21 Michael Freeman by the previously filed affidavit,
22 Judge.

23 THE COURT: Do you have a copy of that to
24 submit?

25 MR. DRIVER: (Passes documents.)

1 THE COURT: All right. Members of the board,
2 the counsel for the state is submitting an affidavit of
3 Michael Freeman. He previously sent a notice that he
4 intended to use this affidavit to the respondent, and
5 it is now admissible and may be considered as evidence.
6 And you can distribute it to the board.

7 (Whereupon, the previously mentioned document
8 was marked as Exhibit No. 6.)

9 THE COURT: It appears the board members have
10 completed their review of Exhibit 6, the affidavit of
11 Michael Freeman. Mr. Driver, you may proceed.

12 MR. DRIVER: Thank you, Your Honor. Board
13 members, you've just received and reviewed the
14 affidavit of Michael Freeman. A particular interest in
15 that affidavit, the state would submit, is that the
16 permit in this matter was pulled for 84,000, not the
17 lowest possible amount on the contract provided by
18 Ms. Larkin, 220,000, and that no other permits were
19 pulled on this matter. And also that Mr. Freeman has
20 represented that affidavit that New Vision Restoration
21 was not required to make any codes changes despite, the
22 state would submit, the statements made in the letters
23 sent to Ms. Larkin to the contrary. Judge, the state
24 would call Gary May.

25 THE COURT: Just have a seat right there,

1 sir.

2 GARY MAY,

3 was called as a witness, having been first duly sworn,

4 testified as follows:

5 EXAMINATION

6 QUESTIONS BY MR. DRIVER:

7 Q. State your name for the record, please.

8 A. Gary May.

9 Q. And what is your address, Mr. May?

10 A. My home address is 3322 Berkshire Circle,
11 Johnson City, Tennessee.

12 Q. How long have you lived at that address?

13 A. Since October '06.

14 Q. And, Mr. May, what's your profession?

15 A. I'm a restaurant owner.

16 Q. And how many restaurants do you own?

17 A. Two.

18 Q. And what are those restaurants?

19 A. Zaxby's restaurants in Johnson City.

20 Q. And what are the locations, the addresses of
21 those restaurants?

22 A. One is 1823 West State of Franklin Road. The
23 other is 2111 North Roan Street.

24 Q. And were you involved in the construction of
25 those restaurants, Mr. May?

1 A. Yes, sir.

2 Q. And do you remember approximately how much
3 each of those cost to construct?

4 A. Yes, sir. The North Roan store cost
5 \$407,000. The State of Franklin location was around
6 350,000.

7 Q. And, Mr. May, at some point did you suffer a
8 fire at the 2111 North Roan Street Zaxby's?

9 A. Yes, sir.

10 Q. Do you recall when that was?

11 A. Yes, sir. September 13, 2007.

12 Q. And could you describe for the board the
13 damage that was done to that store?

14 A. Damage was extensive. From the cashier ally,
15 we call it, where the registers -- where the cashiers
16 meet the customers, all the way back through the
17 kitchen and into the storage area and the coolers and
18 freezers were totally wiped out.

19 Q. And while you were rebuilding that store did
20 you meet Mr. Randy Jenkins from New Vision Restoration?

21 A. I did.

22 Q. Do you recall how you met Mr. Jenkins?

23 A. Mr. Jenkins showed up that morning. I was
24 notified about 3:15 a.m. of the fire by phone from the
25 fire department. A little after daylight -- I stayed

1 down there from the time I got the call. And my
2 insurance adjustor, Dustin Baker, and Randy Jenkins
3 showed up together. And it was somewhere around 8:00
4 or 9:00 a.m, I think.

5 Q. And, Mr. May, is your estimation of the
6 damage, was it under \$100,000?

7 A. No, sir.

8 Q. Was it under \$110,000?

9 A. No, sir.

10 Q. And at any point did you hear the insurance
11 adjustor or Mr. Jenkins represent an approximate amount
12 of the damage in dollar value?

13 A. Not to me at the time they were there
14 together.

15 Q. Okay. Did you ever hear an estimation of the
16 amount of the repair?

17 A. Well, I received a check made out to me and
18 New Vision, I think it was in November, for \$293,095, I
19 believe it was.

20 Q. And did Mr. Jenkins and New Vision
21 Restoration undertake to repair the 2111 North Roan
22 Street store?

23 A. Yeah. At the insistence of Dustin Baker, the
24 insurance adjustor, I agreed to allow Jenkins to do the
25 work.

1 Q. And were you represented how long the repair
2 would take?

3 A. Yes. I was given a date of January 15 to be
4 back in business. Mr. Jenkins said he would run two
5 crews eight hours a day to get me back as quickly as
6 possible, and he said January 15 would be that date.

7 Q. And how did those repairs progress, Mr. May?

8 A. They didn't progress. First of all, we
9 were -- the insurance company shut us down after the
10 fire for 49 days to do an investigation as to what may
11 have caused the fire and who might be liable for the
12 damages of the fire. And after that 49 days was up,
13 then we were given the go ahead to go ahead and
14 rebuild. And I met with Mr. Jenkins in December of
15 2007 -- I'm sorry. First time was late November of
16 2007, and he said, based on the fact that we were
17 delayed by 49 days, the new completion date would be
18 February 15th of 2008.

19 Q. And what happened after that, Mr. May?

20 A. Well, after giving him \$293,000, very little
21 work was done. I went by there daily to check on
22 things, and sometimes it would be one fellow working or
23 maybe two. There was a subcontractor that he had hired
24 to do the roof. And they were working on the roof, but
25 the work was very, very, very slow, and some days no

1 one was there at all.

2 Q. And did you ever meet or have you ever met
3 Thomas Stokes or anyone with Distinctive Designs?

4 A. No, sir.

5 Q. Did New Vision Restoration complete the
6 construction of the 2111 North Roan Street Zaxby's?

7 A. No, sir.

8 Q. What happened such that they did not complete
9 that project?

10 A. On May the 12th I went to the North Roan
11 location, and I was told by a worker there that
12 Mr. Jenkins said that they were finished with the job,
13 or will be finished in two days, and that anything else
14 that needed to be done was on me, for me to do, and
15 that they would be through. And looking around, I was
16 nowhere close to completion. And I panicked, and I
17 said, I don't know what I'm going to do if you don't
18 finish the job. And I said, even the walls, the
19 materials, and decorations had not been brought back
20 from storage and put back on the walls. And he said
21 that was contents, and he doesn't deal with contents.

22 So I called my insurance company and spoke
23 with who I thought to be some authority person and told
24 them what he had said, and at her suggestion, she
25 suggested I ask him to pick his tools up and leave the

1 premises and see if I could find someone to do the job,
2 to finish it.

3 Q. And did you end up having to hire another
4 contractor?

5 A. I did indeed. I hired CBI contractors, which
6 is a Zaxby's approved contractor, to finish the job.

7 Q. How long did it take them to finish that job?

8 A. Approximately 37 days.

9 Q. And do you know approximately how much New
10 Vision Restoration received in insurance proceeds from
11 your job?

12 A. Yes, sir. The first check being \$293,095 and
13 some change. A second check a few days later in
14 November, and it was for content restoration for
15 \$31,600. And then he got a supplement check again in
16 March of \$90,000.

17 MR. DRIVER: The state has nothing further
18 from this witness.

19 THE COURT: Any board members have questions
20 for Mr. May?

21 EXAMINATION

22 QUESTIONS BY THE BOARD:

23 BY MR. SMITH:

24 Q. How much and who paid the contractor to come
25 in and finish the job, the second?

1 A. The second contractor I paid -- well, there
2 were things I had to buy that was included in the
3 insurance proceeds that Mr. Jenkins had already
4 received, such as the freezer and the cooler and other
5 things. I don't know exactly -- today I can't tell you
6 exactly what that dollar figure was. And the labor --
7 the labor or the -- for the new contractor --
8 basically, what the new contractor did, was he sent a
9 supervisor in that was an experienced Zaxby's
10 restaurant builder and then hired subs from there. And
11 I honestly can't remember how much that was.

12 Q. Did the insurance company pay them direct?

13 A. No, sir. There was a check on top of the
14 \$90,000, the third check that Mr. Jenkins had received.
15 There was another check being cut from the insurance
16 company, made out to -- actually, I called the
17 insurance company and told them, do not put his name on
18 the next check coming. And I was able to pay from that
19 check most of the things that had to be done to finish
20 the job.

21 Q. Okay.

22 BY MR. MASON:

23 Q. When the second contractor came in, did he
24 have to undo or redo anything that had been done by
25 Jenkins?

1 A. Absolutely. Yes, sir. Several things were
2 done wrong. Several things were put in the wrong
3 place. I couldn't -- I wasn't able to put my fry
4 freezer, or what we call the reach-in freezer, in its
5 place, because some kind of big box dealing with the
6 electrical was in the way. The plumbing was done
7 wrong.

8 The steel in the back -- there's a steel
9 beam, a main beam that holds the building up, I guess
10 it's a load bearing, had been so warped by the fire, it
11 should have been replaced, but instead they put poles
12 up in the back to hold it up. And we were holding our
13 breath about the inspector. We didn't know if it was
14 going to pass inspection, or that new contractor
15 didn't. But that was put up, and it eliminated some 12
16 inches of space that I could no longer use. And so it
17 made the corridor going down where I put my dry goods
18 very narrow. There were a few other things, and I just
19 can't recall right offhand what they are.

20 BY MR. HAYES:

21 Q. Was Mr. Baker your insurance agent?

22 A. He was my insurance adjustor. He was an
23 independent contractor hired by General Casualty to
24 adjust the fire. He and Mr. Jenkins came in, like I
25 said, at the same time, and at his insistence to hire

1 Jenkins, they went through the building together. They
2 never reported back to me a dollar figure at that point
3 of what it would take. But when the check arrived, it
4 was 293,000 and then another thirty-one six and then
5 two more supplement checks after that. So it maxed out
6 my policy, plus some. I didn't have enough on the
7 policy to do the full recovery.

8 BY MR. WHITTINGTON:

9 Q. Did you get the feeling the adjustor and
10 Mr. Jenkins had worked together before?

11 A. Yes, sir. I was told that. Mr. Baker,
12 Dustin Baker, the adjustor, when he was there with
13 Mr. Jenkins -- I'm totally shaken up. If you have
14 never been through a fire, it's -- I needed some help.
15 And Mr. Baker offered his services and -- but he was --
16 I had actually lined up a Zaxby's approved contractor,
17 per Zaxby corporate demands, to come up and do the
18 restoration, Pacesetters Construction Company who built
19 my first store.

20 And then with Mr. Baker saying, no,
21 Mr. Jenkins, I've worked with him in the past, he's a
22 topnotch, first-class contractor. He can get the job
23 done. He's going to run two eight-hour crews for you.
24 He said, you can trust him because if we miss the
25 estimate on the first run, I won't have to come back

1 and do another inspection. Whatever Mr. Jenkins says,
2 I can trust. And so that will save some problem.
3 Plus, Mr. Jenkins is local and has his own employees.
4 You can -- he'll be here to supervise the work being
5 done on a daily basis rather than an out-of-state
6 contractor coming. So, you know, I bit.

7 BY MR. WHITTINGTON:

8 Q. The amount of payments you made, or the
9 insurance company made, to Mr. Jenkins, did they exceed
10 411,000? I didn't get to add them up.

11 A. Mr. Jenkins got 414,700, roughly, and then I
12 got one check that I asked that his name be removed
13 from, and they sent the money directly to me to help me
14 finish with the new contractor. So it was -- it would
15 have been cheaper to have demolished the entire
16 restaurant and built it back from scratch, which is
17 what should have happened, particularly since -- here
18 again, I'm not a builder either, but when you get a
19 beam warped the way the back one was, that's not a good
20 thing.

21 BY MR. SMITH:

22 Q. Is Mr. Jenkins still around town? Do you
23 ever see him?

24 A. I only saw Mr. Jenkins twice during the
25 entire time, the nine months and four days, that I was

1 down, once on February 19th of 2008 and once on the day
2 of the fire. That's the only time I ever saw him or
3 have seen him since.

4 THE COURT: Are there any other questions by
5 the board members?

6 BY MR. BRODD:

7 Q. Did Mr. Jenkins take a permit out to rebuild
8 the facility?

9 A. Yes, sir. He did.

10 Q. Do you know how much he stated?

11 A. I didn't know because it was never -- he
12 never told me what his license would permit him to do,
13 and I didn't know until Mr. Eddie Welch came to my
14 other restaurant across town on February 14th of 2008
15 and said in the paper -- the building permits are
16 advertised in the paper, and it was pulled for \$98,500
17 for my restoration work.

18 And then his getting a check in November the
19 previous year for two ninety-three would indicate to me
20 that he certainly knew that this was a much bigger job
21 than he was qualified or allowed to do by the State of
22 Tennessee. I found out, too, that when I hired the new
23 contractor, he had to go pull a permit. And that's
24 when I found out that Mr. Stokes had been added a week
25 later, after Mr. Welch and I met on February 14.

1 That's when the record indicated that on
2 February 21st Mr. Stokes was added as a contractor to
3 rebuild my restaurant. And I think his permit was
4 \$450,000.

5 THE COURT: All right. Any other questions
6 by board members?

7 (No response.)

8 THE COURT: Any additional questions,
9 Mr. Driver?

10 MR. DRIVER: Nothing for this witness, Judge.

11 THE COURT: Thank you, sir. You can step
12 down. Next witness.

13 MR. DRIVER: Judge, if I may enter both the
14 affidavit of Theresa Johnson and then the affidavit of
15 Mr. Thomas Stokes previously filed in this matter.

16 THE COURT: All right. The affidavit of
17 Theresa Johnson will be marked and entered as Exhibit
18 Number 7.

19 (Whereupon, the previously mentioned document
20 was marked as Exhibit No. 7.)

21 THE COURT: And the affidavit of Mr. Stokes
22 will be Exhibit Number 8. And they may be distributed
23 to the board.

24 (Whereupon, the previously mentioned document
25 was marked as Exhibit No. 8 .)

1 THE COURT: I will remind the board that the
2 state has complied with all the requirements to
3 introduce and consider an affidavit in these
4 proceedings, and you may consider the statements in the
5 affidavit as though the witness appeared before you and
6 testified under oath.

7 All right. It appears the members have
8 completed their review of Exhibits 7 and 8. Are you
9 ready to proceed, Mr. Driver?

10 MR. DRIVER: I am, Your Honor. Regarding
11 those affidavits, members of the board, the state would
12 respectfully point out that on Ms. Johnson's affidavit,
13 the sixth page following that affidavit shows the
14 initial permit pulled for work at Mr. May's property on
15 November 19th, 2007 was for \$98,500. The fourth page
16 shows that Mr. Stokes provided his license, and on 2/21
17 of 2008 pulled a permit for \$450,000.

18 Mr. Stokes' affidavit shows that this was not
19 a joint venture in any sense of the word, that
20 Mr. Stokes purchased the permit for New Vision
21 Restoration to operate under, that Mr. Stokes had no
22 financial interest in this matter and performed no work
23 at the store. Nothing further from those affidavits,
24 Judge.

25 THE COURT: All right. Is there any

1 additional proof from the state?

2 MR. DRIVER: Yes, Your Honor. The state
3 would enter the order -- a certified copy of the order
4 of the Virginia Board for Licensing Contractors.

5 THE COURT: All right. The Commonwealth of
6 Virginia Board of Contractors and the accompanying
7 documents are marked and entered as Exhibit Number 9.

8 (Whereupon, the previously mentioned document
9 was marked as Exhibit No. 9.)

10 THE COURT: All right. It appears the board
11 members have completed their review of Exhibit Number
12 9, so we can proceed, Mr. Driver.

13 MR. DRIVER: The state has no further proof,
14 Your Honor.

15 THE COURT: All right. Before we get into my
16 charge to the board and your deliberations, do any of
17 you have any questions that you would like to ask
18 Mr. Driver concerning his case?

19 MR. MASON: I have one question, Mr. Driver.
20 I'm interested in the affidavit from Mr. Stokes, that
21 there is no statement of his motivation or willingness
22 to do this for Mr. Jenkins. Do you question -- did you
23 question him about this?

24 MR. DRIVER: That was not part of the
25 affidavit. It's not part of the record in this matter.

1 MR. MASON: He states in his affidavit that
2 he didn't receive any money of any kind except a permit
3 fee. There's no evidence of some kind of a kick back
4 for that?

5 MR. DRIVER: There's no evidence before the
6 board right now.

7 MR. SMITH: I think that may be our next
8 case. But is -- is this contractor still licensed
9 today?

10 MR. DRIVER: He is within his renewal period,
11 or the corporation is within its renewal period.

12 MR. SMITH: Now, I remember that. Okay.

13 MR. WELCH: Your Honor, the board deserves a
14 little bit of clarification on the --

15 THE COURT: I'm sorry, sir. You are out of
16 order at this point.

17 MR. WELCH: Well, that's the reason I ask.
18 There are some clarification that you need.

19 THE COURT: The state has presented its case,
20 and they will consider only the evidence that the state
21 has decided to submit since the respondent failed to
22 appear. Mr. Driver, would you like to make a closing
23 argument to the board?

24 MR. DRIVER: I would, Your Honor. Board
25 members, today you have heard proof that New Vision

1 Restoration, LLC twice engaged in contracting above its
2 license limit. Both of the contracts in this matter
3 occurred before -- Ms. Lazenby testified that that
4 license -- that New Vision Restoration's license limit
5 was increased from 100,000 to 411,000 on March 27th of
6 2009.

7 The state would submit that New Vision
8 Restoration, LLC engaged in dishonest dealing with both
9 Mr. May and with Ms. Larkin, and, further, that the
10 board has the authority to revoke New Vision
11 Restoration, LLC's license based on the revocation by
12 the Commonwealth of Virginia Board for Contractors
13 entered on or around March 10th, 2009.

14 Respectfully, board members, the state --
15 while the board could enter just in a brief period of
16 time from 9/17/2007 until January 31st, 2008 a part of
17 the contract with -- or a part of the project of Just
18 Chicken Feed, whenever it was engaging and contracting
19 above its license limit, that time period alone could
20 issue a civil penalty up to \$685,000. However, in this
21 case the state believes that it's most important and
22 should be the primary purpose to revoke New Vision
23 Restoration, LLC's license, and that is what the state
24 is seeking here today. Thank you, Your Honor.

25 THE COURT: Let me just ask Mr. Driver. Have

1 you prepared a proposed findings and conclusions for
2 the board?

3 MR. DRIVER: I did, Your Honor.

4 THE COURT: Why don't we distribute that to
5 the board and let them have a chance to look at that.

6 MR. DRIVER: I would note, Judge, that under
7 proposed finding number two, Ms. Lazenby's testimony
8 was that the license increase was issued on March 27th,
9 2009, not March 24th, 2009, as was listed in that
10 proposal.

11 THE COURT: Members of the board, you have
12 been distributed a proposed order that was prepared by
13 the state's attorney. Before you consider that, I
14 would have several items I need to go over with you to
15 make sure that we are all on the same page with respect
16 to the law itself.

17 First of all, you are the exclusive judges of
18 the facts of the case and also the exclusive judges of
19 the application of your rules and the Tennessee
20 statutes. The law requires that in order to find
21 any -- the existence of any facts in this case, that
22 you must do so by a preponderance of the evidence.
23 That's a fairly low weight of evidence and is not to be
24 confused with proof beyond a reasonable doubt and
25 things like that, that you hear in criminal cases. You

1 have to limit your inquiry into violations of rules and
2 statutes to those that were specifically alleged in the
3 notice of charges, and you must base your determination
4 solely on the evidence that you have received here
5 today.

6 The Administrative Procedures Act requires
7 that your order contains findings of fact, conclusions
8 of law, including a decision regarding what
9 disciplinary actions shall be taken and the policy
10 reasons for your decision and determination. In
11 determining findings of fact, you must make your own
12 evaluation of the testimony given by each of the
13 witnesses and any documentary evidence that was
14 submitted. You must then give that testimony or other
15 evidence the weight and credibility which you deem to
16 be proper. You may weigh the evidence in light of your
17 own training and experience.

18 Once you have made your findings of fact, you
19 must decide if the respondent's activity constitutes a
20 violation of departmental or board rules or state
21 statutes as alleged in the notice of charges. And if
22 so, you must state those determinations in your
23 conclusions of law.

24 Your decision must include sufficient
25 analysis of the evidence to clearly demonstrate how the

1 facts of the case support your conclusions. And if you
2 decide there has been a violation of a state statute or
3 rule, you must then decide what disciplinary action is
4 appropriate in accordance with your legal authority in
5 considering the particular circumstances of this case.

6 A policy reason must accompany your
7 determination to state why the decision you render in
8 this situation is appropriate. And, finally, I'll just
9 remind you that your deliberations must be in public
10 before all parties. If you need additional
11 instructions during your deliberations, feel free to
12 ask, and I will do what I can to assist you.

13 Mr. Chairman, I will return control of the board to
14 you, and you may proceed with your deliberations.

15 MR. WHITTINGTON: Thank you, Your Honor.
16 Members of the board, counsel has handed out a sheet of
17 the proposed findings of fact. I'll open our part of
18 the hearing up for discussion from the board members
19 themselves, and anyone that agrees with any of these
20 proposed findings at any time will be able to make a
21 motion as to accept or to amend or to add to any of
22 these proposed findings of fact. And that, at this
23 time, is all we'll deal with. We'll deal with the
24 penalties in the next step.

25 MR. MASON: Can we have a minute to read

1 through these?

2 MR. WHITTINGTON: Yes, sir.

3 MR. BRODD: Mr. Chairman, I would like to
4 make a motion that we accept the seven findings of fact
5 proposed by Mr. Driver.

6 MR. SMITH: I would second that.

7 MR. WHITTINGTON: We have got a motion and a
8 second. Any discussion?

9 (No response.)

10 MR. WHITTINGTON: Your Honor, is that
11 anything I need to read out loud, or is this acceptable
12 in its format?

13 THE COURT: It's acceptable if the board
14 members decide, and there's been a motion to accept
15 them in their entirety, so there is nothing additional
16 that you need to do.

17 MR. WHITTINGTON: I have got a motion and a
18 second. Any other discussion?

19 (No response.)

20 MR. WHITTINGTON: All in favor, say aye.

21 THE BOARD: Aye.

22 MR. WHITTINGTON: Opposed likewise.

23 (No response.)

24 MR. WHITTINGTON: Now that we've agreed on
25 the findings of fact, the conclusions of law are

1 presented on page two. If you have not yet had a
2 chance, go ahead and read through it. If not, here
3 again, we can accept these conclusions of law as
4 written. We can add to or we can delete the
5 conclusions of law and make amendments thereto.

6 MR. SMITH: I would make a motion we accept
7 the proposed conclusions of law as presented.

8 MR. MASON: I need another minute.

9 MR. WHITTINGTON: I have a motion. Do I have
10 a second? Has everyone had a chance to look through
11 them yet? We'll hold on them for just a minute.

12 MR. MASON: Second.

13 MR. WHITTINGTON: We've got a motion and a
14 second. Is there any discussion?

15 (No response.)

16 MR. WHITTINGTON: All in favor, say aye.

17 THE BOARD: Aye.

18 MR. WHITTINGTON: Opposed likewise.

19 (No response.)

20 MR. WHITTINGTON: The motion carries. We get
21 down to the penalty phase. We've got a couple of
22 different issues at hand in the proposed findings of
23 fact. Dishonest dealings. I think also to be
24 considered is over limit, misappropriation of funds.

25 MR. SMITH: So are you asking for

1 recommendation of the penalty?

2 MR. WHITTINGTON: Yes, I am.

3 MR. SMITH: I think it will constitute
4 immediate revocation of his license or renewal.

5 MR. MASON: I certainly agree with that. I
6 think the question is, do we also impose a financial
7 penalty?

8 MR. SMITH: I think we do, in case he ever
9 raises his head again. It's going to be hard to
10 collect.

11 MR. BRODD: I agree.

12 MR. MASON: What's the maximum that we can
13 fine him here?

14 MR. WHITTINGTON: \$5,000 per day per offense.

15 MR. SMITH: I think Michael -- is that where
16 you came up with that 80,000 or whatever?

17 MR. HAYES: 600-and-something.

18 THE COURT: You can respond.

19 MR. DRIVER: Thank you, Your Honor. The
20 state actually stated that just considering even a part
21 of Mr. May's contract, the board could assess up to
22 685,000 for only that part. I could run a full
23 accounting of what the board's authority would be in
24 the state's opinion if you would like.

25 MR. MASON: I mean, it wouldn't just be

1 685,000. We have to specify which piece of that is
2 which, right?

3 MR. DRIVER: Typically, that is what you
4 would do.

5 MR. MASON: Well, this seems egregious to me.
6 We have found in our conclusions of law and fact that
7 he's committed these really terrible violations, I
8 think, and I would -- I would be inclined to recommend
9 to this board that we impose the maximum fine allowable
10 in addition to revoking his license.

11 MR. WHITTINGTON: Is that a motion?

12 MR. MASON: So moved.

13 MR. HAYES: Second.

14 MR. WHITTINGTON: I have got a motion and a
15 second. Any discussion?

16 (No response.)

17 MR. WHITTINGTON: One thing I will ask
18 counsel is, is there any way to know? And, Your Honor,
19 do we need to have an amount for this hearing? We're
20 going to need a minimum days, maximum days. Is that
21 what you're doing right now, Michael?

22 MR. DRIVER: I'm working on the state's
23 position as to what that would be.

24 THE COURT: In order to have a -- an order
25 that is binding and enforceable, you will need to have

1 an exact figure in the final order when it's signed.
2 While I think the board probably could vote on its
3 current motion to impose the maximum penalty and leave
4 the amount up to a later computation, it would be
5 better to finalize the figure today before we adjourn
6 so that you will have that before the final order is
7 written.

8 MR. WHITTINGTON: Do you need a recess just
9 for a minute?

10 MR. DRIVER: Five minutes, and I can have
11 that ready.

12 MR. SMITH: Before long we are going to be
13 over the cost of the two jobs, and I'm not sure that
14 would hold up upon further review, as they say.

15 MR. MASON: Do you think we ought to do it up
16 to the cost of the jobs?

17 MR. SMITH: I hadn't thought about it that
18 way. I think we are approaching a million dollars if
19 you probably hit the whole thing. I'm for it.

20 MR. WHITTINGTON: I agree with what Reese is
21 saying. If he does decide to appeal the case through
22 chancery court, chancery court may throw out -- I mean,
23 we do have -- if we do have the number of days that he
24 was on both jobs, we could go \$5,000 per day.

25 MR. MASON: Well, the thing is, what's the

1 purpose of the fine? It's not to recover the cost of the
2 jobs. It's to impose a penalty on him for his
3 violations. So I'm not sure it -- I don't know, as a
4 matter of law, if it -- that it does matter. The value
5 of imposing the fine is not just to fine him, too, but
6 to set a standard that we don't tolerate that kind of
7 dealings with people.

8 MR. WHITTINGTON: It's supposed to act as a
9 deterrent.

10 MR. MASON: So I think I'll let my motion
11 stand.

12 MR. WHITTINGTON: Okay.

13 MR. SMITH: And we are going to plug in a
14 number?

15 MR. MASON: Yeah. He said he needed five
16 minutes. Chairman, if we can recess about five
17 minutes.

18 MR. WHITTINGTON: Can I go ahead?

19 THE COURT: Sure.

20 MR. WHITTINGTON: We'll stand in recess for
21 about five minutes. See you back then.

22 (10:59, a recess was had until 11:05.)

23 MR. WHITTINGTON: Looks like we have got
24 everybody back. Go ahead, counsel.

25 MR. DRIVER: Thank you, Chairman Whittington.

1 The numbers the state has run in the Zaxby's matter
2 from September 17th, 2007, to May 12th, 2008, the date
3 listed on the letter attached to Ms. Johnson's
4 affidavit discharging New Vision Restoration, is 238
5 days times \$5,000, is \$1.19 million for each day of
6 dishonest dealing; at \$1,000 is another \$238,000. In
7 Ms. Larkin's matter, from July 28th, 2008, to at least
8 the date of the check, which was January 24th, 2009, is
9 181 days at \$5,000 is \$905,000. For each day of
10 dishonest dealing \$1,000 is \$181,000, for a total, it's
11 the state's position, of \$2,514,000.

12 MR. WHITTINGTON: Two million?

13 MR. DRIVER: Five one four, zero, zero, zero.

14 MR. MASON: That's more than I expected.

15 MR. WHITTINGTON: It adds up quick.

16 MR. MASON: Well, maybe that's too much. I
17 don't know. I don't know. What do you all think?

18 MR. SMITH: I think you'd never get it. And
19 I think it would be thrown out, especially in the days
20 that we are in now.

21 MR. WHITTINGTON: That's excessive.

22 MR. MASON: I would have to agree.

23 MR. WHITTINGTON: Well, it is up to 5,000.
24 We could propose something in the nature of 500 to a
25 \$1,000 per day, \$50 a day, something of that nature

1 that's more reasonable that, upon review, might not be
2 discredited.

3 MR. MASON: Well, I need to withdraw my
4 motion then, if Jerry will withdraw his second.

5 MR. HAYES: I withdraw my second.

6 MR. WHITTINGTON: The motion and the second
7 are withdrawn.

8 MR. MASON: I think we still want to have a
9 deterrent style penalty. And, of course, I think we
10 still want revocation of license. So I'm -- whatever
11 you all -- I mean, I'm --

12 MR. HAYES: How about \$1,000 a day on the
13 illegal activity and \$1,000 a day on each day that he
14 was in violation, which, I think that would come up to
15 576,000 on Zaxby's and 362,000 on Larkin.

16 MR. MASON: On the dishonest dealings, you
17 mean?

18 MR. WHITTINGTON: No. On both of them.

19 MR. HAYES: On both of them. It would be a
20 total of \$2,000 a day, and that would be 900 and -- it
21 would be \$938,000.

22 MR. WHITTINGTON: Is that a motion?

23 MR. HAYES: I just put it out for discussion.

24 MR. WHITTINGTON: If we are just having
25 discussion, then I go back to what Reese said. I think

1 we have got to be careful when we approach the combined
2 total of both contracts. Over that, that was any
3 profit that he could have expected to make.

4 MR. MASON: Well, the --

5 MR. WHITTINGTON: If you really look at it in
6 the right perspective, if one was around 417,000 and
7 the other was around 240, a good profit for a
8 contractor would be 15 percent. And you could penalize
9 him the expected profit that he could have made.

10 MR. HAYES: I don't think that's enough,
11 because on all those code violations that he was
12 sticking in there, that was 100 percent profit. He was
13 just stealing.

14 MR. WHITTINGTON: I agree with you.

15 MR. HAYES: I don't see the correlation.

16 MR. WHITTINGTON: I agree with you there.

17 MR. HAYES: He graduated from being a petty
18 thief under \$500 to kind of a mega thief here, not
19 hardly on the scale of our Wall Street friends, but
20 still on a pretty good sized scale for Johnson City.

21 MR. MASON: We are talking about total
22 projects, both of these together, about \$650,000 or so,
23 and the maximum on dishonest dealings was how much?

24 MR. DRIVER: \$1,000 per --

25 MR. MASON: What was your total there?

1 MR. DRIVER: It's 238,000 for May and 181,000
2 for Larkin.

3 MR. MASON: And on the -- let's see. On part
4 three did you find -- in conclusions of law number
5 three, what was your total maximum on that?

6 MR. DRIVER: On the reciprocal revocation?

7 MR. MASON: No. On -- no. You are right on
8 number one then, exceeding the limit.

9 MR. DRIVER: On exceeding the limit,
10 1.19 million on May; 905,000 on Larkin.

11 MR. MASON: How much on Larkin?

12 MR. DRIVER: Nine zero five, zero, zero,
13 zero.

14 MR. MASON: 905,000 on Larkin?

15 MR. DRIVER: Yes, sir.

16 MR. MASON: I would suggest that we go the
17 full 238,000 maximum on the dishonest dealings and that
18 we --

19 MR. SMITH: That's on the Zaxby's.

20 MR. MASON: Well, on both, right. 238?

21 MR. DRIVER: Was for Zaxby's. And then 181.

22 MR. MASON: One eighty-one on Larkin?

23 MR. DRIVER: Yes, sir.

24 MR. MASON: Which would be a total of
25 419,000. I suggest that we go the full \$419,000 on

1 both cases for dishonest dealings and \$50,000 each on
2 the exceeding the limit, which would be a total of a
3 \$519,000 fine. And that is less than the combined cost
4 of the two jobs, and, yet, to me -- I mean, maybe you
5 all don't agree, but the dishonest dealings were the
6 most egregious part of it. And if we go the maximum on
7 that and then exceeding the limit at 50,000 on each,
8 none on the reciprocal thing, then it seems to me that
9 that would provide a deterrent yet be a reasonable
10 amount.

11 MR. WHITTINGTON: Is that in the form of a
12 motion?

13 MR. MASON: Well, I want to let you discuss
14 if you think it's right or not.

15 MR. HAYES: Does that fit our scope?

16 MR. DRIVER: That's well within what the
17 state has proposed.

18 MR. SMITH: Do we have to have a formula for
19 the 50 or can we pull it?

20 THE COURT: I think what you can do is
21 indicate in your order what the maximum allowable would
22 be under the statute and then indicate that for that
23 portion of it you're assessing a lower amount in the
24 amount of, and then state what that is.

25 MR. SMITH: Just make a motion.

1 MR. MASON: Then I move that as a penalty for
2 these violations that we immediately revoke the
3 license, that we impose a civil penalty of the maximum
4 allowable on the dishonest dealings of \$181,000 on the
5 Larkin case and \$238,000 on the Zaxby's case, that in
6 addition to that we impose a \$50,000 penalty on the
7 exceeding the limit on the Larkin case for the first 50
8 days of that violation, and that we impose a \$50,000
9 penalty on the Zaxby's case for the first 50 days of
10 that violation, for a total of \$519,000.

11 MR. BRODD: I'll second that.

12 MR. WHITTINGTON: I have a motion and a
13 second. Any discussion by any of the board members?
14 Does everyone understand the motion?

15 (No response.)

16 MR. WHITTINGTON: All in favor, say aye.

17 THE BOARD: Aye.

18 MR. WHITTINGTON: Opposed likewise.

19 (No response.)

20 MR. WHITTINGTON: Seeing none, the motion
21 carries. Being the policy of this board, the
22 toleration of dishonest dealings is not accepted.
23 Also, operating outside the limits of your license is
24 not accepted either. Do I need to list policies, or, I
25 mean, statutes?

1 THE COURT: No. At this point you are
2 stating the board's policy considerations that led to
3 your decision, and I think you are doing a fine job.

4 MR. WHITTINGTON: In consideration of the
5 findings of fact and conclusions of law, the board has
6 reached a decision to penalize this contractor for
7 violating the contractor's licensing law. As a
8 deterrent to possible future violations, revocation of
9 the license.

10 We consider the most egregious actions before
11 we issue a revocation. This contractor, we feel as
12 though has egregiously violated our contractor's
13 licensing law; therefore, revocations and fines as
14 voted upon by the board will be administered. Is that
15 fair enough?

16 THE COURT: Anything else for your order?

17 MR. DRIVER: That should be sufficient,
18 Judge.

19 THE COURT: Mr. Driver will draft an order in
20 compliance with the board's wishes and submit that for
21 your signature. All right. Anything else that needs
22 to be addressed on this case before we adjourn and move
23 to the next case?

24 (No response.)

25 THE COURT: All right. If not then, we are

1 adjourned, and we will reconvene in a few minutes on
2 the next case, which will be Michael Rutherford.

3 (End of hearing, 11:18 a.m.)

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